

25-39
No. 11971

United States
Circuit Court of Appeals
for the Ninth Circuit

CECIL E. HUMPHRIES,

Appellant,

vs.

ROBERT A. HEINZE, Warden, etc.,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Northern Division

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PAUL P. O'BRIEN.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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In the United States District Court for the
Northern District of California, Sacramento,
California

No. 5981

In the Matter of Application of
CECIL E. HUMPHRIES,
for a Writ of Habeas Corpus.

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable Dal M. Lemmon, Presiding Judge
of the United States District Court,

Greetings:

The petition of Cecil E. Humphries, for a writ
of Habeas Corpus, respectfully represents and
shows to this Hon. Court:

I.

That your petitioner, Cecil E. Humphries, a
natural born citizen of the United States, over the
age of twenty-one years, is now illegally and unlaw-
fully imprisoned, confined, restrained and deprived
of his lawful right to liberty, by the State of Cali-
fornia, and by Robert A. Heinze, et al., by impris-
onment in the State Prison of the State of Cali-
fornia, contrary to and in violation of the privileges
and immunities, due process of the law, and equal
protection of the laws clauses of Article XIV, Sec-

tion 1, of the Amendment to the Federal Constitution, for reasons immediately hereinafter made to appear:

II.

That prior to the date of the filing of this petition and on July 15, 1947, in Department "B" of the Superior Court of and for the County of Los Angeles, State of California in Santa Monica, before the Hon. Orlando H. Rhodes, judge therein presiding, upon an information, theretofore filed in said Court by the district attorney of the County and State aforesaid, charging petit theft with prior conviction of a felony, being No. 113274.

III.

That the imprisonment of said petitioner, Cecil E. Humphries, is contrary to and in violation of the said privileges and immunities due process of the law, and equal protection of the laws clauses and provisions of the Fourteenth Amendment to the Constitution of the United States of America, and Article 1, Section 13 of the Constitution of the State of California.

The clause XIV, Amendment to the Constitution of the United States which forbids a state to "deny to persons within its jurisdiction the equal protection of the laws."

IV.

Your petitioner, Cecil E. Humphries, contends that he has not had the required protection that is provided for by the Equal protection of the Laws; that the arrest, confinement, conviction and imprisonment is illegal, and the proceedings are likewise

illegal in their entirety; and the trial that was held before the Hon. Orlando H. Rhodes, was unconstitutional wherein the said jury returned its verdict of not guilty, but, because the foreman of the said jury failed to sign his name to the verdict, the Court would not recognize said verdict, and returned the jury for another.

V.

Further, this same jury, acting on the same evidence and charge, and only one court of theft, returned two other verdicts, which was plainly shown double jeopardy.

VI.

Let it be said at this time that the jury took the case for consideration, and at no time was any defense offered in opposition to the pretended evidence, whereas the defense rested without contesting what was supposed to be a case.

VII.

Your petitioner contends that every right that was favorable to him, from the time of arrest, was denied; and an examination of the record in this case will verify and substantiate aforesaid contentions. Whereas your petitioner has been without sufficient funds, only part of the transcript could be obtained, and petitioner, Cecil E. Humphries, beg this Hon. Court to obtain a complete transcript of the said trial, and he do contend that said transcript is sufficient to prove double jeopardy and all other claims which will present a light of truth to all allegations made by petitioner of said case, being No. 113274.

VIII.

That in a writ of Error Coram Nobis to this same judge Orlando H. Rhodes, it was outlined, that according to the California Penal Code, S-1097, that when a reasonable doubt as to the degree, a defendant can be convicted only of the lowest degree, and included, was a case from California reports, Tuttle-1874 No. 4,167, this writ of Coram Nobis was denied; and it is the contention of petitioner that there is not a grand jury in existence in the United States that would bring in an indictment on such evidence as was offered in the conviction in the instant case. Where the present methods are used, as in the present case, your petitioner contends that judge Orlando H. Rhodes, in this case, does not recognize either the constitution of California or the United States, therefore it is absolutely impossible to get a fair and impartial trial in his Court.

IX.

Therefore, wishing to show the allegations of the *none legallity* of the proceedings, petitioner, has a copy of the proceedings at the preliminary hearing.

That on May 7, 1947, the proceeding at this said hearing, plainly show that there was not one bit of legal evidence sufficient to hold any one for trial; as the only thing admitted into the record as evidence, with any semblance of truth, was the defendant's prison record, which the government keeps on record for the purpose of identification,

not for the states to use as evidence and exhibits in a Court of law.

However, your petitioner will not make this copy and contents of the preliminary hearing a part of this writ, but will have it in Court when the writ is heard, to bolster all claims made in reference to it and the evidence used at the trial.

Further, your petitioner will include a certified copy of the additional instructions, that shows a "not guilty" verdict, and two other verdicts brought in by the jury at the said trial, all of which the judge refused to accept, therein sending the jury out to deliberate again without giving them a possibility of bringing back a not guilty verdict.

X.

The following is a certified copy of the "Additional Instructions" given to the jury in the case of the People vs. Cecil E. Humphries, being No. 113274, which is attached hereto and hereby made a part hereof for all purposes with the same force and effect as though herein set forth at length.

Filed Santa Monica, July 7, 1947. A. F. Moroney, County Clerk.

ADDITIONAL JURY INSTRUCTION

Additional Instructions Given in the Case of The
People vs. Cecil E. Humphries, No. 113274.

The Court: The record will show that the defendant and jury are present and that the Deputy

District Attorney has been excused from appearing. Ladies and gentlemen, have you arrived at a verdict?

The Foreman: We have.

The Court: Will you hand the verdict to the bailiff, please? Mr. Pfeiffer, you have signed two forms?

The Foreman: I got the wrong impression. I thought after deciding on the case that we were on, that the other one automatically applied.

The Court: No, that does not necessarily follow. Let the record show that the jury has handed the court three verdict forms, one, not guilty, unsigned, one, guilty of petty theft, a misdemeanor signed by the Foreman, and one a verdict of guilty as charged in the Complaint, and also true, the charge of a prior conviction and service in a penal institution, therefor.

Are the instructions in the list—do you now see what the situation is, Mr. Pfeiffer?

The Foreman: Yes, I believe so.

The Court: Petty theft is an included offense of this charge. The charge is petty theft with a prior conviction of a felony.

The Foreman: Yes, Sir.

The Court: If you find that there was no prior conviction of a felony but that the defendant committed the crime of theft, as otherwise defined in my instructions, then, and in that event only should you bring in a verdict of guilty of petty theft a misdemeanor.

The Foreman: That was our intention.

A Juror: No, it was not.

The Court: Is it your intention to bring in a verdict of petty theft, a misdemeanor, or did you intend to find the defendant guilty as charged in the information?

The Foreman: That is right.

The Court: In order to do that you should take another vote and receive authorization by a unanimous jury, and to return a verdict of guilty of petty theft, a misdemeanor, which is a lesser and included offense, you must find that is the only offense of which the defendant is guilty, if you find he committed the crime of petty theft, and that the prior conviction is not true. Do you follow me?

A Juror: I do not.

The Court: If, however, you believe that you have found that the defendant committed the crime of petty theft and it is true that he was convicted of the felony of burglary in the State of Utah and served a term in the Utah penal institution, then your verdict would be the finding of guilty as charged in the information, and further find the charge of the second conviction and service in a penal institution, therefor, is true. Do you all understand now?

The Foreman: That is what we thought we were doing.

The Court: It is not entirely proper to state what you had intended to arrive at, at this time. Do you now understand what you want to do, in

view of these instructions, when you return to the jury room? Are there any questions of any of you? Shall I go over it again? The defendant is charged with the crime of petty theft and a prior conviction of a felony. If you find him guilty of petty theft and that there was a prior conviction of a felony, and that he served a term in a penal institution, then return a verdict of guilty as charged. If on the other hand, you find him guilty of petty theft as defined in my instructions previously given, but that was not a good prior conviction—that he did not serve a term in a penal institution—then return a verdict of guilty of petty theft. Now what I have said is in no way to detract from the heretofore read instructions. You are not to disregard them in any respect. You are to consider all of them along with these additional instructions which I have now given you, which shall become, and are ordered to become a part of the record in the case. Any other questions now? Reconduct the jury to the jury room, and if and when you have arrived at a verdict announce the same to the bailiff, please, Mr. Pfeiffer.

XII.

(10:00 O'clock p.m.)

The following is office of jury; ruled on by the California Supreme Court, showing that the jury has nothing to do with legal affects, as this case had no facts for the judge to instruct the jury on; as will be seen in the following.

California reports, Tuttle—1874 (No. 4,167).

Office of trial jury. It is the office of a trial jury

by their verdict, to find the facts in issue, whether general or special, and with the legal effect of those facts they have no concern.

XIII.

Dissent of Jury,—Although a jurior may, at the last moment, dissent from a verdict rendered, yet that dissent must be founded on the question of the fact presented by the verdict, and not upon the information received from the verdict of Jury—If jury has special issues submitted to them, and find on these issues, and also find a general verdict for the plaintiff and when the verdict is read, the Court declares that on the findings the defendant must have judgment, and some of the jury then dissent from the special verdict, and the Court sends them out for further deliberation, and they then return with a general verdict, but are unable to agree on the special verdict, the Court should not accept the general verdict.

XIV.

And whereas, pursuant to said judgment and commitment the petitioner's imprisonment has been changed to the Folsom State Prison, in Sacramento County, State of California.

XV.

Wherefore, the said Cecil E. Humphries prays that a writ of Habeas Corpus issue, directed to the said Robert A. Heinze, as Warden of the California State Prison in the United States of America, commanding him the said Robert A. Heinse, as Warden, *supra*, to have and to bring the body of the said Cecil E. Humphries, before and into the

United States District Court, Northern District of California, Sacramento, California, and that the said United States District Court of Northern California, and Hon. Judge Dal M. Lemmon thereof discharge the said Cecil E. Humphries, and order and Secure his Release from such Restraint, and the said Robert A. Heinze, as Warden, do and abide by the Order of the said Court.

Respectfully submitted,

CECIL E. HUMPHRIES,

In pro. per.

State of California,

County of Sacramento—ss.

Cecil E. Humphries, first being duly subscribed and sworn to says and deposes that he is the petitioner for writ of Habeas Corpus, and that he has **read the contents of the foregoing petition** and knows the contents therein to be true to the best of his knowledge; and, also as to those matters related on information and allegations, he believes them to be true.

CECIL E. HUMPHRIES,

In pro. per.

Subscribed and sworn to before me this 14th day of April, 1948.

(Seal)

PETER J. MURRY,

Notary Public in and for the County of Sacramento, State of California.

Notation that filing fee is being paid in full at the same time that the writ is notarized.

[Endorsed): Filed Apr. 21, 1948. C. W. Calbreath, Clerk.

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Wednesday, the 21st day of April, in the year of our Lord one thousand nine hundred and 48.

Present: The Honorable Dal M. Lemmon, District Judge.

[Title of Cause.]

Due consideration having been had on the application for writ of Habeas Corpus, it is Ordered that the petition for writ of habeas corpus be and the same is hereby denied.

District Court of the United States, Northern
District of California, Northern Division

Notice of Appeal is hereby given that Cecil E. Humphries (being No. 5981) do appeal said action from the above entitled Court within said action was denied on April 21, 1948, to the U. S. Circuit Court of Appeals, whereas, you and each of you are notified here and now to show cause, if you have, why said Appeal should not be granted.

CECIL E. HUMPHRIES.

Sworn to and subscribed before me this 12th day of May, A. D. 1948.

(Seal)

PETER J. MURRY,

Notary Public in and for the County of Sacramento, State of California.

My Commission expires on Sept. 2nd, 1951.

[Endorsed]: Filed May 28, 1948.

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT, TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 11 pages, numbered 1 to 11, inclusive, contain a full, true and correct transcript of certain records, and proceedings in the case of Cecil E. Humphries vs. Robert A. Heinze, No. 5981, as the same now remain on file and of record in this office.

I further certify that the cost of preparing and certifying the foregoing Record on Appeal is the sum of Four and 40/100 (\$4.40), and that the same has been paid to me by the appellant herein.

In Witness Whereof, I have hereunto set my hand and the original seal of said District Court, this 12th day of June, A. D. 1948.

(Seal)

C. W. CALBREATH,
Clerk.

/s/ By F. M. Lampert,
Deputy Clerk.

[Endorsed]: No. 11971. United States Circuit Court of Appeals for the Ninth Circuit. Cecil E. Humphries, Appellant, vs. Robert A. Heinze, Warden, etc., Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed July 13, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

IN SUPPORT OF PETITION

Office of the Clerk,
U. S. Circuit Court of Appeals,
P.O. Box 547,
San Francisco 1, California,
Mr. Paul P. O'Brien,

Dear Sir:

I am in receipt of a copy of subdivision 6 of Rule 19, which calls for a statement of points on which appellant intends to rely on appeal; as I want the record printed in its entirety; wherein the only and material points needed is the fact that since my conviction, I have been denied without cause of the denial shown, and/or without my appearance in court which was prayed for in the writ. The "question" and only "question", is, has a

judge the power to direct a legal jury to disregard the first "Not Guilty" verdict, and return a second one of a verdict of "Guilty"?

Petitioner contends that the lower courts did not give the writ of error coram nobis or habeas corpus any consideration, which is provided for by the U. S. Constitution; whereas, on a writ of habeas corpus, which in plain English, means "have the body", but petitioner was not present at said court denial; whereas, Article 1, Section 9 of the U. S. Constitution reads:

"The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

Please attach the foregoing to said petition, and make it a part thereof, with the same force and effect as though it was original. Here's thanking you in advance, as I remain,

Respectfully,

/s/ CECIL E. HUMPHRIES.

Subscribed and sworn to before me this 23rd day of June, 1948.

(Seal) /s/ LLOYD P. SMITH,

Notary Public in and for the County of Sacramento, State of California.

[Endorsed]: Filed July 13, 1948. Paul P. O'Brien, Clerk.

